



**DECISION
OF AGENCY
ON APPEAL**

In the Appeal of: [REDACTED]
For: Qualified Health Plan
Agency: MNSure Board
Docket: 160903

On March 31, 2015, Appeals Examiner Douglass C. Alvarado held an evidentiary hearing under 42 United States Code §18081(f) and Minnesota Statute §62V.05, subdivision 6(a).

The following people appeared at the hearing:

[REDACTED] Appellant
[REDACTED] Appellant's Spouse

Based on the evidence in the record and considering the arguments of the parties, the Appeals Examiner recommends the following findings of fact, conclusions of law, and order.

STATEMENT OF ISSUES

Whether the MNSure Board correctly determined that the Appellant is ineligible for in a Qualified Health Plan during a special enrollment period.

FINDINGS OF FACT

1. MNSure (herein Agency) determined that the Appellant is ineligible for enrollment in a Qualified Health Plan (QHP). *Agency Exhibit # 1*. The Appellant filed a request challenging the denial, which was received by MNSure on February 27, 2015. *Appellant's Exhibit A*. On March 31, 2015, Appeals Examiner Alvarado held an evidentiary hearing via telephone conference. The judge accepted into evidence one exhibit from the Agency¹ and one exhibit from the Appellant². The record was closed at the conclusion of the hearing.
2. On January 30, 2015, the Appellant (D.O.B. [REDACTED]) applied for affordable health insurance coverage for himself only through the MNSure Eligibility System. *Agency Exhibit # 1 and Appellant's testimony*. The Appellant's wife, [REDACTED] is in receipt of Medicare coverage. *Testimony of [REDACTED]*
3. The Appellant reported in his application that he intends to file taxes jointly with his wife for 2015. *Agency Exhibit # 1*.
4. The Appellant attested to projected adjusted gross income in the amount of 43,985.40 from employment. *Agency Exhibit # 1 and Appellant's testimony*. [REDACTED] receives Retirement, Survivor's and Disability Insurance (RSDI) benefits in the amount of \$700 monthly. *Testimony of [REDACTED]*
5. The Appellant attested that he does not have access to employer-sponsored health insurance. *Appellant's testimony*.
6. On February 4, 2015, MNSure determined that the Appellant was eligible for enrollment in a QHP. *Agency Exhibit # 1*. The Appellant was determined eligible for premium tax credits in the amount of \$181.25. *Id.*
7. The Appellant attempted to enroll in a QHP on February 12, 2015, and February 13, 2015. *Appellant's testimony*. He contacted MNSure on February 13, 2015, to confirm his enrollment in a QHP. *Agency Exhibit # 1*. MNSure did not verify the

¹ MNSure submitted one exhibit which was marked as follows: 1) MNSure Appeals memorandum.

² The Appellant submitted one which was marked as follows: A) Appeal Request Form.

Appellant's enrollment status on the Eligibility System. *Id.* The Appellant was advised that there was nothing that would prevent the processing of his enrollment. *Id.*

8. On February 27, 2015, the Appellant again contacted MNsure to verify his QHP enrollment. *Agency Exhibit # 1.* At that time, the Appellant was advised that he had not successfully enrolled in a QHP. *Id.* He was informed that he was ineligible to enroll in a QHP because the open enrollment period had closed February 15, 2015. *Id.*

APPLICABLE LAW

9. Pursuant to 45 C.F.R. § 155.520(b)(1) and Minn. R. 770.0105, subp. 2(D) an appeal must be received within 90 days from the date of the notice of eligibility determination. Minn. Stat. 256.045, subd. 3. and Minn. Stat. 256L.10 provide that a person may request a state fair hearing by filing an appeal either: 1) within thirty days of receiving written notice of the action; or 2) within ninety days of such notice if the Appellant can show good cause why the request for an appeal was not submitted within the thirty day time limit.

10. The MNsure Board has the legal authority to review and decide issues in this appeal regarding Appellant's eligibility through MNsure for Advance Premium Tax Credits, Cost Sharing Reductions, Qualified Health Plan, and/or the Small Business Health Insurance Options Program. *Minn. Stat. § 62V.05, subd. 6.* The MNsure Board has an agreement with the Department of Human Services to hear and decide appeals involving premium assistance. The Commissioner of the Minnesota Department of Human Services has the legal authority to review and decide issues in this appeal regarding Appellant's eligibility for Medical Assistance and MinnesotaCare. *Minn. Stat. § 256.045, subd. 3.*

11. Federal regulations governing Medical Assistance and Exchange appeals require that, if an individual appeals a determination of eligibility for the advance payment of the premium tax credit or cost sharing reductions, the appeal will automatically be treated as a request for a fair hearing of the denial of eligibility of Medicaid.³ The reason for this automatically pairing of Medicaid appeals with appeals concerning advance payment of the premium tax credits is to further the goal of providing a streamlined, coordinated appeals process for Appellants which avoids the need for the Appellant to file multiple appeals with different agencies. *Id.* In Minnesota, Medicaid programs include Medical Assistance and MinnesotaCare.

12. Federal regulations concerning eligibility for advance payment of a premium

³ 45 C.F.R. § 155.510(b)(3); 78 Fed. Reg. 4598 (proposed Jan. 22, 2013)(comments regarding proposed 42 C.F.R. § 431.221(e)); and 78 Fed. Reg. 54096 (Aug. 30, 2013)(comments regarding 45 C.F.R. § 155.510(b)(3)).

tax credit are found at 45 C.F.R. §155.305(f)(1) and 26 C.F.R §1.36B-2. MNsure must determine a tax filer eligible for an advance premium tax credit if he or she is expected to have household income, as defined in 26 C.F.R. 1.36B-1(e), between 100% and 400% of federal poverty guidelines during the benefit year for which coverage is requested (unless he or she is a lawfully present noncitizen), and one or more applicants for whom the tax filer expects to claim a personal exemption deduction on his or her federal tax return for the benefit year are: (a) eligible for enrollment in a Qualified Health Plan through the Exchange as specified in 45 C.F.R. 155.305(a), and (b) are not eligible for minimum essential coverage, with the exception of coverage in the individual market, in accordance with section 26 C.F.R. 1.36B-(a)(2) and (c). 45 C.F.R. §155.305(f).

13. Federal regulations for health insurance exchanges created under the Affordable Care Act state that during the open enrollment period for the benefit year beginning on January 1, 2015, the Exchange must ensure coverage is effective: (1) January 1, 2015, for QHP selections received by the Exchange on or before December 15, 2014; (2) February 1, 2015, for QHP selections received by the Exchange from December 16, 2014 through January 15, 2015; and (3) March 1, 2015, for QHP selections received by the Exchange from January 16, 2015 through February 15, 2015. *45 C.F.R. § 155.410(f)*.

14. Pursuant to 45 C.F.R. 155.410(a)(2) the Exchange may only permit a qualified individual to enroll in a QHP or an enrollee to change QHPs during the initial open enrollment period, the annual open enrollment period, or a special enrollment period for which the qualified individual has been determined eligible. 45 C.F.R. 155.420(d) sets forth the special enrollment period criteria. The Exchange must allow a qualified individual or enrollee to enroll in or change from one QHP to another if:

- 1) the qualified individual or his or her dependent loses minimum essential coverage;
- 2) the qualified individual gains a dependent or becomes a dependent through marriage, birth, adoption, placement for adoption, or placement in foster care;
- 3) the qualified individual, or his or her dependent, which was not previously a citizen, national, or lawfully present individual gains such status;
- 4) the qualified individual's enrollment or non-enrollment in a QHP is unintentional, inadvertent, or erroneous and is the result of the error, misrepresentation, or inaction of an officer, employee, or agent of the Exchange or HHS, or its instrumentalities as evaluated and determined by the Exchange;
- 5) the enrollee or, his or her dependent adequately demonstrates to the Exchange that the QHP in which he or she is enrolled substantially violated a material provision of its contract in relation to the enrollee;

- 6) the enrollee is determined newly eligible or newly ineligible for advance payments of the premium tax credit or has a change in eligibility for cost-sharing reductions;
- 7) the qualified individual or enrollee, or his or her dependent, gains access to new QHPs as a result of a permanent move;
- 8) the qualified individual is an Indian;
- 9) the qualified individual or enrollee, or his or her dependent, demonstrates to the Exchange, in accordance with guidelines issued by HHS, that the individual meets other exceptional circumstances as the Exchange may provide; or
- 10) it has been determined by the Exchange that a qualified individual or enrollee, or his or her dependents, was not enrolled in QHP coverage; was not enrolled in the QHP selected by the qualified individual or enrollee; or is eligible for but is not receiving advance payments of the premium tax credit or cost-sharing reductions as a result of misconduct on the part of a non-Exchange entity providing enrollment assistance or conducting enrollment activities.

15. A qualified individual or enrollee has 60 days from the date of an event which triggers the special enrollment period to select a QHP unless specifically stated otherwise in 45 C.F.R. § 155.420. *45 C.F.R. § 155.420(c)*.

CONCLUSIONS OF LAW

16. This appeal is timely in that it was filed within 90 days of the date the Appellant was notified of that he was no longer eligible to enroll in a QHP. The Appellant is not contesting the household's ineligibility for Medical Assistance or MinnesotaCare coverage or the amounts of premium tax credits and cost-sharing reductions.

17. The Appellant was determined eligible for enrollment in a QHP on February 4, 2015. The Appellant attempted to enroll in a QHP on February 13, 2015. He immediately contacted the Agency to ensure that his enrollment had been successful. MNsure did not verify the Appellant's enrollment but assured him that there was no reason that his enrollment would not be processed. After open enrollment closed, the Appellant learned that he was, in fact, not enrolled in a QHP. MNsure denied the Appellant a special enrollment period.

18. However, the Appellant's non-enrollment in a QHP was unintentional, inadvertent, or erroneous and was the result of the error, misrepresentation, or inaction of an officer, employee, or agent of MNsure. Therefore, the Appellant qualifies for a special enrollment period pursuant to 45 C.F.R. 155.420(d)(4). The 60-day special enrollment period begins the date of this final order. Absent the Agency's enrollment verification error the Appellant could have cured his unsuccessful enrollment and

obtained QHP coverage effective March 1, 2014. Therefore, upon his enrollment in a QHP, the Agency is ordered to provide the Appellant with the option of enrollment retroactive to March 1, 2015.

19. This decision is effective March 1, 2015.

RECOMMENDED ORDER

THE APPEALS EXAMINER RECOMMENDS THAT:

- The MNSure Board REVERSE the Agency's determination to deny a special enrollment period on behalf of the Appellant and ORDER the Agency to permit the Appellant to enroll in a QHP during a 60-day special enrollment period beginning the date of this Decision of State Agency on Appeal, and allow the Appellant retroactive coverage going back to March 1, 2015 if the Appellant elects retroactive coverage in those months by contacting Jessica Kennedy, MNSure Appeals Manager & Legal Counsel at Jessica.M.Kennedy@state.mn.us.

/s/Douglass C. Alvarado
Douglass C. Alvarado
Appeals Examiner

April 14, 2015
Date

ORDER

IT IS THEREFORE ORDERED THAT based upon all the evidence and proceedings, the MNSure Board adopt the Appeals Examiner's findings of fact, conclusions of law and order as each agency's final decision.

Date

Cc:  Appellant
 MNSure

FURTHER APPEAL RIGHTS

This decision is final, unless you take further action.

Appellants who disagree with this decision should consider seeking legal counsel to identify further legal recourse.

If you disagree with the effect this decision has on your eligibility for **Advance Premium Tax Credits, Cost Sharing Reductions, Qualified Health Plan, and/or the Small Business Health Insurance Options Program**, you may:

- **Appeal to the United States Department of Health and Human Services (DHHS)** under 42 U.S.C. § 18081(f) and 45 C.F.R. § 155.520(c). This decision is the final decision of MNsure, unless an appeal is made to DHHS. An appeal request may be made to DHHS ***within 30 days of the date of this decision*** by calling the Marketplace Call Center at 1-800-318-2596 (TTY 855-889-4325); or by downloading the appeals form for Minnesota from the appeals landing page on www.healthcare.gov.
- **Seek judicial review** to the extent it is available by law.